

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ANN M. GALLEGOS,

Plaintiff,

vs.

Civ. No. 02-594 WWD/RLP

CITY OF LAS VEGAS, a chartered
New Mexico municipality, CITY COUNCIL,
CITY OF LAS VEGAS, TONY MARTINEZ,
as mayor and individually, and JACK MAES,
as city manager and individually,

Defendants.

MEMORANDUM OPINION AND ORDER

This matter comes before the Court upon Defendants' Motion to Dismiss Counts III and IV [docket no. 21] filed November 7, 2002. The Plaintiff has dismissed Count III of the complaint; accordingly, only the motion to dismiss Count IV of the complaint will be considered. Defendants seek to have Count IV dismissed, a claim of conspiracy to interfere with civil rights, which is set out in paragraphs 69-72 of the complaint as follows:

69. Plaintiff hereby incorporates the above paragraphs [1-68] as though fully set forth herein.
70. The Defendants reached agreements among themselves to violate Plaintiff's rights protected by the United States Constitution in Sections 1983 and 1985.
71. The Defendants conspired against Plaintiff in retaliation for Plaintiff filing an EEOC Title VII complaint.
72. As a direct and proximate result of Defendants' conspiracy, Plaintiff's constitutional rights have been violated and she has suffered damages and losses.

Defendants contend that Plaintiff has failed to allege "any class based animus" in connection with the decision to terminate her. Defendants further claim that Plaintiff has failed to articulate any allegations of conspiracy in anything more than a conclusory fashion which is not adequate. Defendants also claim that although Plaintiff says she was discriminated against because of her gender, there are no facts that would support either a class based animus, or an invidious pattern of such discriminatory behavior on the part of Defendants. Finally, Defendants contend that the dispute in question should be characterized as a "private feud."

By its nature, conspiracy smacks of agreements made in secret followed by an act or acts in furtherance of those agreements. Nevertheless, mere conclusory allegations about the existence of the conspiracy will not suffice to maintain a complaint based on such allegations.

WHEREFORE,

IT IS ORDERED that on or before January 8, 2003, Plaintiff shall file an amended complaint addressing the deficiencies with respect to Count IV set out by Defendants.

IT IS FURTHER ORDERED that if such an amended complaint is not filed, or if the allegations set out therein in connection with Count IV are insufficient, Count IV of the complaint will be dismissed.



UNITED STATES MAGISTRATE JUDGE